

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
JERRY D. GRADY dba)
TRI-STATE CONSTRUCTION,)
INC.,)

Appellant,)

v.)

SOUTHWEST AIR)
POLLUTION CONTROL)
AUTHORITY,)

Respondent.)

PCHB No. 79-138

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeals from the issuance of two civil penalties of \$150 and \$250 for the alleged violations of Section 4.06 of the respondent's Regulation I having come on regularly for formal hearing on the 30th day of November, 1979 in Vancouver, Washington, and appellant, Jerry D. Grady dba Tri-State Construction, Inc., appearing through its project manager, Barry J. Lamb and respondent, Southwest Air Pollution Control Authority, appearing through its attorney, James D. Ladley with Nancy E. Curington, hearing examiner presiding, and the

1 Board having considered the exhibits, records and files herein, and
2 having reviewed the Proposed Order of the presiding officer mailed to
3 the parties on the 14th day of December, 1979, and more than twenty
4 days having elapsed from said service; and

5 The Board having received no exceptions to said Proposed Order and
6 the Board being fully advised in the premises; NOW THEREFORE,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
8 Order containing Findings of Fact, Conclusions of Law and Order dated
9 the 14th day of December, 1979, and incorporated by reference herein
10 and attached hereto as Exhibit A, are adopted and hereby entered as
11 the Board's Final Findings of Fact, Conclusions of Law and Order
12 herein.

13 DATED this 30th day of January, 1980.

14 POLLUTION CONTROL HEARINGS BOARD

15
16 Max H. Washington
17 MAX W. WASHINGTON, Chairman

18 Chris Smith
19 CHRIS SMITH, Member

20 David Akana
21 DAVID AKANA, Member

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
JERRY D. GRADY dba TRI-)
STATE CONSTRUCTION, INC.,)
Appellant,)
v.)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 79-138

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeals from the issuance of two civil penalties of \$150 and \$250 for the alleged violations of Section 4.06 of respondent's Regulation I, came before the Pollution Control Hearings Board at a formal hearing on November 30, 1979 in Vancouver, Washington. Nancy E. Curington, Administrator presided.

Appellant was represented by Barry J. Lamb, project manager. Respondent was represented by its attorney, James D. Ladley.

Having heard the testimony, having examined the exhibits and

EXHIBIT A

1 having considered the contentions of the parties, the Board makes
2 these

3 FINDINGS OF FACT

4 I

5 Pursuant to RCW 43.21B.260, respondent has filed with the Board
6 a certified copy of its Regulations and amendments thereto, which
7 are noticed.

8 II

9 On July 19, 1979, respondent's inspector received a complaint
10 regarding the handling of bentonite, which was being dumped from
11 railroad cars into trucks, at a construction site at the new sewage
12 treatment lagoon in Vancouver, Washington. The inspector arrived at
13 the scene at 8:40 a.m., and observed the wind picking up the
14 bentonite, a light colored talc-like material, and carrying it
15 across a fence and depositing onto neighboring structures and
16 properties. A cloud of the substance was visible. The inspector
17 spoke with appellant's project manager, who indicated that they were
18 experiencing some difficulties with the unloading procedures, but
19 that the task was nearly complete. Respondent's inspector then
20 issued field notice of violation No. 4290, for allegedly unlawfully
21 causing or allowing particulate matter to become airborne in
22 violation of respondent's Regulation I, Section 4.06. On July 24,
23 1979, Notice of Violation and Civil Penalty for \$250 was sent to the
24 appellant, by certified mail.

25 III

26 Appellant erected a scaffolding with a protective covering in

1 order to help contain the bentonite within the loading area, which
2 was located away from the neighboring residential area. Appellant
3 was required to apply bentonite to the lagoon under the terms of its
4 contract with the City of Vancouver. Previous to July 19, 1979,
5 appellant had assured a neighboring business that the bentonite
6 would not be unloaded during that business working hours (after 7:30
7 a.m.).

8 IV

9 On August 6, 1979, respondent received a citizen's complaint
10 regarding dust being raised by the operation of heavy equipment at
11 the site of the new sewage treatment lagoon in Vancouver,
12 Washington. Respondent's inspector arrived at the site, a seventeen
13 acre hole with a dike around it, at approximately 2:20 p.m. At that
14 time he observed a continuous plume of dust, over 100 feet off the
15 ground, rising from a tractor and travelling over to a neighboring
16 residential area. The dust was so dense that the houses were barely
17 visible. The inspector issued a field notice of violation No. 4313
18 to an employee of appellant, for the alleged violation of Section
19 4.06 of respondent's Regulation I and instructed the employee to
20 immediately take precautions to prevent dust. On August 9, 1979,
21 Notice of Violation and Civil Penalty of \$250 was sent to the
22 appellant, by certified mail.

23 V

24 Appellant was required to disc the soil to facilitate its
25 removal. Although initially only one water truck was at the site,

27 PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER 3

an additional truck was utilized after July 9, 1979. Appellant considered that application of more water would have prevented the soil removal operations due to bogging down of equipment in mud.

VI

Section 4.06 of respondent's Regulation states, in pertinent part:

No person shall cause, let, allow, permit or suffer particulate matter to be handled, transported, or stored without taking reasonable precautions to prevent air pollution.

VII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

On July 19, 1979, appellant violated Section 4.06 of respondent's Regulation I by causing the bentonite it was unloading or "handling" without taking reasonable precautions to prevent air pollution. Although the appellant had erected a protective scaffolding, it was insufficient to prevent the bentonite from being carried by the wind onto others' properties.

II

On August 6, 1979, appellant violated Section 4.06 of respondent's Regulation I by causing and allowing dust from its excavation work to be released into the air and carried over a

1 substantial distance. Although appellant was using water trucks,
2 such efforts were apparently insufficient, in view of the severity
3 of the dust cloud. The appellant chose to allow the dust to be
4 released rather than slow down its work schedule.

5 III

6 In view of the severity of the air pollution caused by appellant
7 on both July 19, 1979 and August 6, 1979, the two civil penalties of
8 \$125 and \$250 totalling \$400, should be affirmed.

9 IV

10 Any Finding of Fact which should be deemed a Conclusion of Law
11 is hereby adopted as such.


12 From these Conclusions the Board enters the following

ORDER

14 The two civil penalties of \$150 and \$250 totalling \$400, are
15 affirmed.

16 DATED this 14th day of December, 1979.

17 POLLUTION CONTROL HEARINGS BOARD

18
19 
20 NANCY E. CURINGTON
Administrator